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STATE OF ALABAMA
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County Commissions – Capital
Improvements Fund – Bonds – Airports and
Aircraft

The Covington County Commission may not use capital improvement funds received pursuant to section 11-29-6 of the Code of Alabama to satisfy payments on economic development bonds incurred to construct hangars owned by the South Alabama Regional Airport Authority.

Dear Mrs. Brooks:

This opinion of the Attorney General is issued in response to your request on behalf of the Covington County Commission.

QUESTION

May the Covington County Commission (“County”) use county government capital improvement funds (“Fund”) received pursuant to section 11-29-6 of the Code of Alabama to satisfy payments on economic development bonds incurred to construct hangars owned by the South Alabama Regional Airport Authority?

FACTS AND ANALYSIS

Your request states that during 2006, for economic development purposes, a bond was issued by the South Alabama Regional Airport Authority (“Airport”) to build two hangars and to consolidate certain indebtedness of the Airport.

Although the Airport is the owner of the property, the County, the City of Andalusia, and the City of Opp guaranteed payment on the bonds. In 2011, the Covington County Industrial Development Authority was established and issued an additional bond to build additional hangars at the airport. The County, the City of Andalusia, and the City of Opp guaranteed payment on these bonds as well.

The hangars are owned by the South Alabama Regional Airport Authority, a public corporation, and are currently leased by private companies. Since 2006, several companies have leased the hangars and the income from the leases has been applied to the bond payments. As of January 2015, however, the income from the leases is insufficient to cover the bond payments. As a result, the County, the City of Andalusia, and the City of Opp are assuming their pro rata portions of the bond payments, and you question whether funds received pursuant to section 11-29-6 of the Code may be used by the County for these bond payments.

At the outset, we note that counties are creatures of statute. The fact and nature of their respective existence, as well as the duties, powers, and limitations, are governed solely by legislative mandate. *Lorence v. Hosp. Bd. of Morgan County*, 294 Ala. 614, 617, 320 So. 2d 631, 633 (1975); opinion to Honorable Thomas A. Snowden, Chairman, Shelby County Commission, dated December 17, 1987, A.G. No. 88-00086 at 1. Moreover, it is a well-established proposition of law that, as a political subdivision of the state, a county can exercise only that authority conferred on it by law. *Brown v. Bd. of Educ. of Montgomery*, 863 So. 2d 73, 76 (Ala. 2003); *Dillard v. Baldwin County Comm'n*, 833 So. 2d 11, 16 (Ala. 2002); *Jefferson County v. Johnson*, 333 So. 2d 143, 145 (Ala. 1976); *Alexander v. State*, 274 Ala. 441, 443, 150 So. 2d 204, 206 (1963); *Trailway Oil Co. v. City of Mobile*, 271 Ala. 218, 222, 122 So. 2d 757, 760 (1960); opinion to Honorable Charles V. Ford, Choctaw County Probate Judge, dated November 27, 1990, A.G. 91-00099.

Also significant is the recognition of the basic and well-recognized principle that public corporations are separate and distinct entities from the state, county, or municipal governments they serve. Opinion to Honorable William D. Latham, Attorney, Water Works and Gas Board of the Town of Maplesville, dated February 6, 2013, A.G. No. 2013-031; opinion to Honorable Robert Davis, Mayor, Town of Cedar Bluff, dated May 10, 2005, A.G. No. 2005-126; opinion to Honorable Michael G. Graffeo, General Counsel, Alabaster Water Board, dated June 16, 2000, A.G. No. 2000-167; opinion to Honorable Lynn Blackmon, Secretary, Conecuh-Monroe Counties Gas District, dated July 28, 1998, A.G. No. 98-00187, *citing Opinion of the Justices* No. 216, 294 Ala. 571, 576, 319 So. 2d 699, 703 (1975).

Turning now to your specific question, section 11-29-6 of the Code sets forth the purposes for which distributions to the Fund may be spent. ALA. CODE § 11-29-6 (2008). Those permissible purposes are as follows:

a. Public buildings; counties may expend such funds for the construction, furnishing, equipping, and renovation of public buildings including, without limitation, jails, courthouses and courthouse annexes, juvenile facilities, and paying rentals to public corporations for the use of public buildings. Such funds may also be expended for the purpose of purchasing land for public buildings.

b. Solid waste; counties may expend such funds for the purchase of land for sanitary landfills, the purchase of solid waste handling and disposal equipment including collection vehicles and landfill compaction equipment, and other solid waste handling and disposal equipment and/or facilities.

c. Public utilities; counties may expend such funds for public water and waste water treatment facilities and drainage facilities. Such expenditures may include the purchase of land and rights-of-way, and the purchase of equipment and supplies necessary for the installation and maintenance of such public facilities.

d. Roads and bridges; up to 50 percent of the funds received by counties may be expended for the construction, maintenance, reconstruction, restoration, or resurfacing of county roads and bridges.

e. Bonds and warrants; counties may expend such funds for the payment of any valid obligation of a county that is evidenced by bonds, notes, warrants, or other instruments now or hereafter authorized by law to be issued for any of the purposes enumerated in clauses a, b, c, and d of this paragraph.

f. Public health; counties may expend funds for the operation and maintenance of the county health department.

g. Pensions and security; counties may expend funds for the operation and maintenance of the county human resources department.

Id. (emphasis added). Only sections (a) and (e) are relevant to your inquiry.

It is axiomatic that the plain language of a statute controls, except in those rare cases in which a literal application of the statute will produce results demonstrably at odds with the intention of the drafters. *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242, 109 S.Ct. 1026, 1031 (1989). Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Where a statutory pronouncement is distinct and unequivocal, there remains no room for judicial construction, and the clearly expressed intent of the Legislature must be given effect. *Ex parte Holladay*, 466 So. 2d 956, 960 (Ala. 1985).

To determine the breadth of the permissible uses of the Fund, as intended by the Legislature, it is helpful to look at the history of the creation of the Fund, as well as other principles of law. Section 219.02 of the Constitution of Alabama created the Alabama Trust Fund. ALA. CONST. art. XI, § 219.02 (amend. 450). Section 219.05 of the Constitution of Alabama authorized the distribution of a portion of the Alabama Trust Fund for use by the counties. ALA. CONST. art. XI, § 219.05 (amend. 668). The Alabama Constitution further provides that the funds “shall only be expended for any purposes as are now or hereafter authorized by general act of the Legislature.” ALA. CONST. art. XI, § 219.05(f) (amend. 668).

The Legislature has authorized the expenditure of the Fund in the County Government Capital Improvement Act. ALA. CODE §§ 11-29-1 to 11-29-7 (2008). The stated intent of the Legislature in adopting the County Government Capital Improvement Act is to “assist in the restoration and improvement of **county government buildings** . . . and to promote the health, safety, and public welfare of the citizens of the state.” ALA. CODE § 11-29-2 (2008) (emphasis added).

Section 11-29-6(a) of the Code further expounds upon the type of “public buildings” for which the Fund may be used. ALA. CODE § 11-29-6(a) (2008). Therein, the Legislature permits the Fund to be used for: (1) public buildings such as jails, courthouses, courthouse annexes, and juvenile facilities; and (2) paying rentals to public corporations for the use of public buildings. *Id.*

Section 11-29-3 of the Code provides definitions for purposes of the Fund, but does not define “public building.” ALA. CODE § 11-29-3 (2008). In

the absence of a statutory definition, this Office, in this context, has often relied upon dictionary definitions to discern the scope of various statutory provisions. *See* opinion to Honorable Sammie E. Maze, Mayor, Town of Kimberly, dated October 6, 2003, A. G. No. 2004-003 (relying on Webster's Third New International Dictionary to define "structure"); opinion to Honorable Bobbye Phillips, President, Board of Directors, Northwest Alabama Regional Mental Health Authority, dated May 20, 1987, A.G. No. 87-00181 (relying on Black's Law Dictionary, Fifth Edition, to define "public building" as "a building belonging to or used by the public for the transaction of public or quasi public business"). Black's Law Dictionary currently defines a "public building" as a "building that is accessible to the public, especially, one that is owned by the government." BLACK'S LAW DICTIONARY 1423 (10th ed. 2014).

Elsewhere in the Code, "public building," for purposes of lead reduction, is defined as "a building *designed for public access* and maintained for the public benefit through the use of state or local government funds, including . . . government facilities." ALA. CODE § 22-37A-2(7) (2006) (emphasis added). Additionally, section, 11-81-140(1)a of the Code includes airports as being among "other public buildings." ALA. CODE § 11-81-140(1)a (2008).

The hangars in question, however, are neither owned by a government entity nor are they being utilized by the public. To the contrary, they are owned by a public corporation, an entity that is separate and distinct from the government. *Latham* at 1; *Davis* at 1; *Graffeo* at 2; *Blackmon* at 1. Additionally, the hangars are not accessible by the public. They are leased to a private entity.

Accordingly, the hangars are not "public buildings" as contemplated by section 11-29-6(a) of the Code. We note that the result may be different if the County was leasing the hangars from the Airport for the use of the County. Under the facts presented, however, the County must use unrestricted funds to satisfy its obligations under the bond guarantees.

CONCLUSION

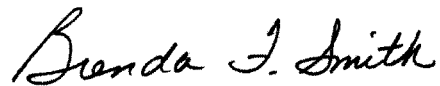
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I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in black ink that reads "Brenda F. Smith". The signature is written in a cursive, flowing style.

BRENDA F. SMITH
Chief, Opinions Division

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